

82-738 Migra v. Warren City Bd/Ed

~~to~~ Affirm

Over-all question: Is a TT precluded from 1983 suit in fed. ct. on claims she could have raised (but did not) in her state ct. suit vs same parties based on same occurrence ~~or fact~~ - i.e. cancellation of her ct. ? Yes.

CAB affirmed DC holding fed suit is precluded

1. Allen v McCurry - its reasoning controls:

*This is Rule of six circuits. Only CA 2 is contra* "Under res judicata, a final judg. on merits of an action precludes the parties from re-litigating issues that were or could have been raised {449 U.S. at 94}

2. Krenner v. Chemical Corp (1982) held

"77&C Act" requires Fed Cts to give same preclusive effect to state judgs that ... would be given in cts. of that state".

102 S. Ct 1883, at 1889

3. Law of Ohio. CAB relied on fed law of preclusion, w/o relying on Ohio law.

4. Fed Waiver Rule. We could hold that fed law (fed common law) requires preclusion - as CAB seems to have thought.

5. Possibly Remand to determine & apply state law of preclusion

5. Decide Ohio law ourselves as we did last Term in Harung v. Prosser (Va case written by T.M.)

Harung v Prosser